IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI EASTERN DIVISION

FREDDIE LEWIS,

Plaintiff,

v. NO. 1:96CV333-S-D

BRYAN FOODS, INC.,

Defendant.

<u>OPINION</u>

This cause, alleging breach of an employee handbook, was originally filed in the Circuit Court of Clay County, Mississippi. In the complaint, plaintiff alleged that defendant failed to follow the work rules set forth in its handbook when it discharged him without cause. In plaintiff's view, the handbook constitutes an independent employment contract under Mississippi law that requires "cause" for discharge. Defendant removed the action to this court based on federal question jurisdiction. It maintains that plaintiff's state law claims are preempted by § 301 of the Labor-Management Relations Act (LMRA), 29 U.S.C. § 185(a), based on a collective bargaining agreement (Agreement) between defendant and plaintiff's union, the United Food and Commercial Workers Union AFL-CIO, CLC, and Its Local 1991 of West Point, Mississippi (Union). Presently before the court is plaintiff's motion to remand.

Simply, the facts are these: Plaintiff was employed by defendant as a production employee at its West Point, Mississippi, facility and was a member of the Union and subject to the Agreement and work rules in effect at the time. In mid-October, 1995, plaintiff was suspended for misconduct

pending a final determination regarding discharge. Plaintiff and the Union challenged the suspension as being without just cause and violative of the Agreement. Ten days later, plaintiff's suspension was converted to a discharge. Neither plaintiff nor the Union filed a grievance on that action.

In support of remand, plaintiff argues that his claims are not preempted by federal law since the court need not interpret the Agreement to resolve the handbook issue. In response, defendant points to the Agreement which, among other things, indicates that employees may be discharged for just cause, gives defendant the right to invoke differing levels of discipline for the infraction of the same rule, and establishes a grievance procedure for addressing defendant's alleged violation of the Agreement. The Agreement also allows defendant to promulgate work rules which are applicable to all employees, including production employees covered by the Agreement. These rules are set forth only in the handbook and are not specifically stated in the Agreement itself. Generally, existence of a federal question must appear on the face of the complaint to sustain removal to this court based on federal question jurisdiction. Baker v. Farmers Electric Cooperative, Inc., 34 F.3d 274, 278 (5th Cir. 1994). "One exception to this rule, however, occurs where an area of state law has been completely preempted by federal law." Id. Section 301 claims involving disputes about a collective bargaining agreement constitute such an area of preemption. Id. Preemption in this area guarantees that section 301 issues "are decided in accordance with the precepts of federal labor policy." Id. at 279. If the resolution of a state law claim depends upon the meaning of a collective bargaining agreement or if the state law claim is inextricably intertwined with the terms of that agreement, "the application of state law...is preempted and federal labor-law principles...must be employed to resolve the dispute." Id. (quoting Lingle v. Norge Division of Magic Chef, Inc., 486 U.S. 399, 405 (1988)). However, section 301 does not preempt every state law claim between the parties to an Agreement or claims which are "only tangentially related to such an agreement."

Branson v. Greyhound Lines, Inc., Amalgamated Council Retirement and Disability Plan, 126 F.3d

747, 754 (5th Cir. 1997).

After carefully considering the matter, the court is of the opinion that plaintiff's claim that

defendant breached the employee handbook when it allegedly discharged him without cause is

preempted by federal law. As previously mentioned, the Agreement in this case reserves to

defendant all the rights and functions of management, including the right to discharge, suspend, or

otherwise discipline employees. The Agreement also clearly references the work rules section of the

employee handbook and gives defendant the right to use varying levels of discipline for rules

infractions as it sees fit. Together, these facts illustrate the extent to which the state law claim and

the terms of the Agreement are "inextricably intertwined." See Stafford v. True Temper Sports, 123

F.3d 291 (5th Cir. 1997). This court therefor has subject matter jurisdiction over this action, and

plaintiff's motion to remand is denied.

An appropriate order shall issue.

This 17th day of December, 1997.

CHIEF JUDGE

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